

EXHIBIT C

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 and

6 OSAGE MINERALS COUNCIL,

7 Intervenor-Plaintiff,

8 vs.

No. 14-CV-704-GFK-JFJ

9 OSAGE WIND, LLC; ENEL KANSAS,
10 LLC; and ENEL GREEN POWER
NORTH AMERICA,

11 Defendants.

12 VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF BILL MOSKALUK
13 TAKEN ON BEHALF OF THE PLAINTIFF
ON JUNE 16, 2021 AT 10:00 A.M.

14 APPEARANCES

15 On behalf of the PLAINTIFF:

16 Stuart Ashworth

17 Kathryn D. McClanahan

18 Nolan Fields

19 UNITED STATES ATTORNEY'S OFFICE

20 Northern District of Oklahoma

110 West 7th Street, Suite 300

21 Tulsa, Oklahoma 74119

22 918.382.2700

23 stuart.ashworth@sol.doi.gov

24

25 (Appearances continued on the following page)

26 ALSO PRESENT: Megan Beauregard, Michelle Hammock, &

27 Christina Watson

28 VIDEOTAPED BY: Megan Smith

29 REPORTED BY: Abby Rhodes, CSR, RPR

Page 2		Page 4		
1	APPEARANCES CONTINUED	1	Exhibit	Description
2	On behalf of the INTERVENOR-PLAINTIFF: Mary Katherine Nagle	2	62	Project Option/Change Order
3	Shoney Blake	3	63	5/22/15 E-mail Chain
4	PIPESTEM & NAGLE	4	64	October 2014 E-mail Chain
5	401 South Boston Avenue, Suite 2200 Tulsa, Oklahoma 74103 918.936.4705 mknagle@pipesistemlaw.com	5	65	10/14/14 E-mail Chain
6	On behalf of the DEFENDANT: Ryan Ray	6	66	6/26/14 Meeting Notes
7	NORMAN, WOHLGEMUTH, CHANDLER, JETERN, BARNETT & RAY 401 South Boston Avenue 2900 Mid-Continent Tower Tulsa, Oklahoma 74103 918.583.7571	7	67	September 2014 E-mail Chain
8		8	68	September 2014 E-mail Chain
9		9	69	Defendants' Fifth Amended and
10		10		Supplemental Privilege Log
11	Sarah M. Stevenson Lynn Slade	11	70	Project Short Views Update 10/17/14
12	MODRALL, SPERLING, ROEHL, HARRIS & SISK 500 Fourth Street NW, Suite 1000 Albuquerque, New Mexico 87103 505.848.1800 sarah.stevenson@modrall.com	12		
13		13		
14		14		
15		15		STIPULATIONS
16		16		It is stipulated that the deposition of BILL
17		17		MOSKALUK may be taken pursuant to agreement and
18		18		Federal Rules of Civil Procedure on June 16, 2021,
19		19		before Abby Rhodes, CSR, RPR.
20		20		
21		21		
22		22		
23		23		
24		24		
25		25		
Page 3		Page 5		
1	INDEX	1		VIDEOGRAPHER: This is the videotape
2		2		deposition of Bill Moskaluk in the matter of the
3	BILL MOSKALUK	3		United States of America and Osage Minerals Council
4	Direct Examination by Mr. Ashworth	4		versus Osage Wind, et al., filed in the United States
5	Cross Examination by Ms. Nagle	5		District Court for the Northern District of Oklahoma,
6	Redirect Examination by Mr. Ashworth	6		Case No. 14-CV-704-GFK-JFJ. We're on the record at
7	EXHIBITS	7		10:00 a.m. on June 16, 2021. Will counsel please
8	Exhibit Description	8		state their names for the record.
9	5/15/14 E-mail	9		THE WITNESS: William Moskaluk.
10	5/22/14 E-mail Chain	10		MR. ASHWORTH: Stuart Ashworth with the U.S.
11	10/9/14 Letter from the Bureau of Indian Affairs	11		Attorney's Office. I also have Cathy McClanahan and
12		12		Nolan Fields, attorneys in the case, as well as
13	Exhibit B(i) Scope of Work	13		Michelle Hammock and Christina Watson who are
14	Organizational Procedure No. 80	14		paralegals with the U.S. Attorney's Office. And we
15	Contract Between Osage Wind LLC & IEA Renewable Energy Inc.	15		represent the U.S.
16		16		MS. NAGLE: Mary Katherine Nagle with
17	7/9/14 Email Chain	17		Pipestem & Nagle. I represent the
18	September 2014 E-mail Chain	18		intervenor-plaintiff, the Osage Minerals Council, and
19	September 2014 E-mail chain	19		with me today is my colleague Shoney Blake.
20	Bill Moskaluk's LinkedIn Page	20		MR. RAY: Ryan Ray for the defendants. I
21	Defendants' Response to Plaintiff's Motion for Preliminary Injunction	21		believe also on call for the defendants is Lynn Slade
22		22		and Sarah Stevenson. Counsel Megan Beauregard is
23	Osage Wind Project Alignment Meeting	23		observing.
24	Agenda 9/9/14	24		VIDEOGRAPHER: Okay. Will the reporter now
25	EXHIBITS (Continued)	25		swear in the witness.

<p>1 agreement with what your understanding was at the 2 time, in the summer of 2014?</p> <p>3 A Yes, I agree with it.</p> <p>4 Q Okay. And -- okay. Great.</p> <p>5 Do you -- do you know whether the original 6 scope was for the IEA team to be allowed to mine on 7 site as -- as Ron states here?</p> <p>8 A No, I don't.</p> <p>9 Q Okay. But it is your understanding that 10 originally the plan was for them to fill the -- the 11 back -- use backfill from the construction site on the 12 wind farm; is that correct?</p> <p>13 A Yes.</p> <p>14 Q Do you recall at any point in time, was 15 there a decision ever made to start importing the 16 backfill instead and purchasing those materials off 17 site?</p> <p>18 A I don't recall that.</p> <p>19 Q Okay.</p> <p>20 A No, wait a second. I think there was the 21 opportunity for everybody to put together a cost 22 estimate, but to my knowledge, it didn't go any 23 further.</p> <p>24 Q Okay. Do you recall reviewing the cost 25 estimate?</p>	<p>Page 154</p> <p>1 from Craig Mazurowski to you, CCing Chris Hanson and 2 Ron Ritter, dated September 2, 2014, Craig writes 3 "Bill, in the past we have had a couple conversations 4 regarding crushing rock on site. It is my 5 understanding that Enel/Tradewinds does not want any 6 crushing on site due to mineral right issues. Please 7 confirm. Thanks."</p> <p>8 And you write back "Craig, let's discuss 9 this a.m. Bill."</p> <p>10 Do you recall this e-mail exchange in 11 September of 2014 with Craig Mazurowski?</p> <p>12 (Exhibit 55 Marked for Identification)</p> <p>13 A Vaguely, but I do remember -- whatever the 14 outcome was, I -- I can't really remember, but I 15 vaguely remember this e-mail, yes.</p> <p>16 Q Okay. Do you recall much -- well, do you 17 know first -- did you end up having this conversation 18 with Craig?</p> <p>19 A I'm not even certain about that either.</p> <p>20 Q Okay. That's fine. I -- I know it was a 21 long time ago.</p> <p>22 When he writes "In the past we've had a 23 couple conversations regarding crushing rock on site," 24 do you -- do you recall what those conversations were 25 about specifically?</p>
<p>1 A No, I don't.</p> <p>2 Q Okay. Did anyone ask you to assist in 3 preparing the cost estimate?</p> <p>4 A Yes, Giuseppe had asked me. Hold on now. 5 I'm not sure what it was, what estimate I did. I 6 think it was on manhours or something of that nature, 7 not -- not materials.</p> <p>8 Q Okay. And would that have been -- well, let 9 me -- let me actually ask this way: 10 If you -- if -- if EGPNA and IEA had had to 11 import backfill for the wind farm off site onto the 12 site, would that have increased the number of hours 13 of -- in terms of just manpower and labor to do that?</p> <p>14 A I'm not really sure. If it was -- if it was 15 in the contract originally, there wouldn't be any 16 additional cost factors in it so...</p> <p>17 Q Mmm-hmm.</p> <p>18 A I'm unsure.</p> <p>19 Q Okay. All right. Let me move on to another 20 exhibit, and this was previously entered as Exhibit 55 21 in another deposition, and -- and so -- okay. Here we 22 go. So let's see here, this looks like it is dated -- 23 well, first of all, I will say this is -- this is 24 Exhibit 55. It's Bates stamped Osage Wind-019901 and 25 it looks like at the bottom here we've got an e-mail</p>	<p>Page 155</p> <p>1 A No.</p> <p>2 Q Okay. He also writes "It is my 3 understanding that Enel/Tradewinds does not want any 4 crushing on site due to mineral -- mineral right 5 issues."</p> <p>6 Do you recall anyone from Enel or Tradewind 7 saying something to you along those lines?</p> <p>8 A They might have said something to Craig. 9 That -- that, I don't know.</p> <p>10 Q Okay. Do you recall anyone like Bill Price 11 or Steve Champagne ever mentioning to you that there 12 should not be crushing on site due to mineral right 13 issues?</p> <p>14 A No.</p> <p>15 Q Okay. So you -- you really don't recall 16 ever kind of hearing any messaging around we need to 17 stop crushing due to mineral right issues?</p> <p>18 A No.</p> <p>19 Q And it is true that actually crushing 20 continued after September 3, 2014, on the Osage Wind 21 farm; is that correct?</p> <p>22 A Yes.</p> <p>23 Q Okay. Do you recall whether the Bureau of 24 Indian Affairs ever communicated to EGPNA that 25 crushing minerals on the Osage Wind farm would require</p>

<p style="text-align: right;">Page 158</p> <p>1 a lease or permit?</p> <p>2 A In that letter that was presented to me, I 3 believe that's when they told Enel or whomever and 4 that was a sandy soil permit.</p> <p>5 Q Okay. And do you recall reviewing that 6 letter when -- when it was received by EGPNA?</p> <p>7 A No, I -- I read it briefly and passed it on 8 to Giuseppe DiMarzio and also Bill Price.</p> <p>9 Q Okay. And did they, after that, ask you to 10 tell IEA to cease construction while they reviewed the 11 letter or considered the legal issues, or were you 12 ever asked to even pause on construction?</p> <p>13 A No.</p> <p>14 Q Did they inform you at that time that there 15 would be no need to pause on construction because they 16 had a legal memorandum that -- that explained that the 17 BIA was wrong?</p> <p>18 A No.</p> <p>19 Q Okay. So let's -- I'm going to -- we 20 don't -- I don't think we need to look at this 21 document anymore. I'm actually going to show you 22 another document. Here we go. Okay. And this one 23 was previously entered as Exhibit 56. Here's its 24 stamp and it's -- it's Bates stamped Osage 25 Wind-018666. And this looks like an e-mail to -- from</p>	<p style="text-align: right;">Page 160</p> <p>1 Q Mmm-hmm.</p> <p>2 A And you shoot your foundations so it's just 3 a construction term that we use.</p> <p>4 Q Mmm-hmm. Mmm-hmm. Mmm-hmm.</p> <p>5 I note here that -- and -- and -- and so was 6 some of that not a part of the initial plan or design 7 or it wasn't fully anticipated when you commenced 8 construction?</p> <p>9 A Yeah, it was -- it was not -- it was not 10 part of the plan initially and, like I said, all of us 11 were under the impression that the geotech report was 12 true in its findings of the types of soil, but it 13 wasn't -- it didn't even reflect the correct soils 14 that were in there so somebody got mixed up.</p> <p>15 Q I see.</p> <p>16 And you write here as of September 16 17 "Falling behind with excavations due to rock."</p> <p>18 A Yes.</p> <p>19 Q At current -- do you know how far behind you 20 would have been from the projected schedule at that 21 time?</p> <p>22 A One or two of the foundations, I believe, 23 were at -- at risk. We had to complete them at a 24 certain time for GE to bring their turbines in, and 25 that's what we based -- that's what they based the</p>
<p style="text-align: right;">Page 159</p> <p>1 you to Giuseppe, dated September 16, 2014.</p> <p>2 Do you happen to recall this e-mail? I'll 3 give you a chance to look at it.</p> <p>4 (Exhibit 56 Marked for Identification)</p> <p>5 A It's basically giving Giuseppe an update on 6 where we were at. It was like a daily report. 7 Report.</p> <p>8 Q And was Giuseppe your direct supervisor or 9 would that be more Bill Price or was it a combo of 10 both?</p> <p>11 A More of a Bill Price.</p> <p>12 Q Okay. So I note here that you write 13 "Running into rock conditions affecting the 14 operation."</p> <p>15 What exactly did you mean by that?</p> <p>16 A Means I couldn't dig the hole.</p> <p>17 Q Okay. And so I note that sort of in this -- 18 this e-mail you mention having to -- let me see if 19 I -- you know, those areas will be charged and shot.</p> <p>20 What -- what does it mean to -- and I may 21 not get the lingo right, to -- to charge those areas 22 or to shoot them, what is that referring to?</p> <p>23 A It's referring to the dyn -- dynamite charge 24 that you put in the drilled hole and then you 25 basically set it off.</p>	<p style="text-align: right;">Page 161</p> <p>1 initial schedule on, was the delivery of turbines. I 2 had to have some place to put them.</p> <p>3 Q Mmm-hmm.</p> <p>4 A Without any -- you know, without any 5 construction activity going around.</p> <p>6 Q Right. Okay.</p> <p>7 And you write here "At current rate, I don't 8 know if they can meet GE delivery time frames."</p> <p>9 So is it correct to say that at that point 10 in time, in mid September, if there were any further 11 delays or pauses on construction, Enel would not be 12 able to meet GE's delivery time frame? Is that 13 correct?</p> <p>14 A Yeah, they couldn't figure out what we were 15 going to do at the time, and that was just a little 16 nudge on my part to have them make a decision on which 17 way to go.</p> <p>18 Q Did they ever get back to you in response to 19 this with a decision?</p> <p>20 A I'm not really sure.</p> <p>21 Q Okay. All right. I think -- I think that 22 is enough with this document and so I am going to now 23 move on to another document. Here we go. And I 24 believe this one has not yet been introduced so this 25 is going to be Exhibit 67 and it is Bates stamped</p>